

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #19-409

EMISSION REPORTING REVISIONS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 2-6](#) concerning emissions reporting requirements for certain sources in Clark, Floyd, and LaPorte counties, and Lawrenceburg Township in Dearborn County. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2-6-1](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

The Clean Air Act (CAA) requires that the United States Environmental Protection Agency (U.S. EPA) set primary and secondary National Ambient Air Quality Standards (NAAQS) for the six criteria air pollutants considered harmful to public health and the environment. These pollutants are carbon monoxide (CO), lead, nitrogen dioxide, ozone, particulate matter (PM), and sulfur dioxide (SO₂). Each county in Indiana is classified, or designated, as being in attainment if air quality monitoring or modeling indicate that the area is meeting the NAAQS. Areas are designated as nonattainment if the measured concentrations of one or more of these criteria pollutants exceed the NAAQS or contribute significant amounts of pollutants to an area that measures air quality that does not meet the NAAQS. An area can be redesignated from nonattainment to attainment if the area has demonstrated attainment of the standard, and if U.S. EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

In accordance with federal requirements, sources in each county must submit emission reports to the state on a regular basis based on their attainment status and the permit under which they operate. Most sources are only required to report the previous year's emissions data once every three years; however, sources that are in nonattainment areas and emit 25 tons or more of oxides of nitrogen (NO_x) per year, have the potential to emit volatile organic compounds (VOC) or PM₁₀ at 250 tons or more per year, or that emit CO, NO_x, or SO₂, at 2,500 tons or more per year must submit emission reports annually. Once a county has established attainment of the emission standards, it can be reclassified from nonattainment to attainment and resume reporting once every three years.

On June 4, 2018, U.S. EPA designated Clark and Floyd counties as nonattainment for the 2015 8-hour ozone standard as a portion of the Louisville, Kentucky-Indiana nonattainment area (83 FR 25776). In accordance with CAA requirements, each state with an ozone nonattainment area must revise its state implementation plan to require sources with VOC or NO_x emissions greater than 25 tons per year to submit an annual statement of actual emissions under 42 United States Code (U.S.C.) 7511a(a)(3)(B). This rulemaking will amend [326 IAC 2-6](#) to include Clark and Floyd counties under this requirement to ensure that state rules are consistent with federal

regulations. This rulemaking will also remove LaPorte County and Lawrenceburg Township in Dearborn County from the annual emission statement requirements, as both of these counties have demonstrated attainment of emission standards and have been redesignated to attainment.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This rulemaking has no impact beyond that which is already imposed by federal law.

Public Participation and Work Group Information

No work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhous@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on amendments to [326 IAC 2-6](#), concerning emissions reporting requirements for certain sources in Clark, Floyd, and LaPorte counties, and Lawrenceburg Township in Dearborn County. These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by the Clean Air Act to adopt these requirements as state rule.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, as it ensures that sources in Clark, Floyd, and LaPorte counties, and Lawrenceburg Township in Dearborn County, are in compliance with emission reporting regulations required by U.S. EPA.
- (4) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy

alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(5) The draft rule is hereby incorporated into these findings.

Bruno L. Pigott
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #19-409 Emission Reporting Revisions
Keelyn Walsh
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to kwash@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than September 27, 2019.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 2-6-1](#) Applicability

Authority: [IC 13-14-8](#); [IC 13-17-3](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 1. (a) This rule applies to all of the following:

(1) Sources required to have a Part 70 operating permit under [326 IAC 2-7](#).

(2) Sources located in the following counties that emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x) into the ambient air at levels equal to or greater than twenty-five (25) tons per year:

(A) Lake.

(B) Porter.

(C) ~~LaPorte~~. **Clark.**

(D) ~~Lawrenceburg Township, Dearborn County~~. **Floyd.**

(3) Sources that emit lead into the ambient air at levels equal to or greater than five (5) tons per year.

(b) All sources permitted by the department are subject to section 5 of this rule concerning additional information requests.

(c) Sources covered by subsection (a) must comply with the compliance schedule in section 3 of this rule.

(Air Pollution Control Division; [326 IAC 2-6-1](#); filed Nov 12, 1993, 4:00 p.m.: 17 IR 732; filed Feb 26, 2004, 3:45 p.m.: 27 IR 2210; filed Jul 14, 2006, 1:25 p.m.: [20060809-IR-326050078FRA](#); filed Oct 21, 2016, 10:24 a.m.: [20161116-IR-326160162FRA](#))

[Notice of Public Hearing](#)

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An [html](#) version of this document.